IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11155 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOVIA GOPALAK VASAHAT SAHKARI MANDALI LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR TUSHAR MEHTA for Petitioner,
MR AY KOGJE AGP for Respondent Nos: 1 & 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/02/2007

ORAL JUDGMENT

1. Mr.Tushar Mehta, learned counsel for the petitioner and Mr. A.Y. Kogje, learned Assistant Government Pleader for

the respondents - State.

2. The facts necessary for the disposal of the present petition are that the petitioner claims itself to be a society of persons belonging to Gopalak community, who, according to the petitioner, belong to lower strata of the society, economically, educationally, culturally and socially. According to them, the State Government allotted 120 Acres land from Survey No.943 of Village Movia and part of land of Survey No.888. Since after coming into force of the Gujarat Agricultural Land Ceiling Act, 1960 (“the Act” for short), the members of the petitioners were required to submit the details of land possessed by them, they, accordingly filed an application under sec.3 of the Act on the ground that in view of their constitution and duties, which they are discharging, they would be entitled to exemption certificate. By order dtd.6/10/1986 in Ceiling Case No.1 of 1986, exemption certificate was granted in favour of the society. The matter was taken in revision by the State Government in Revision Application No.142-CHH. By order dtd.29/1/1991, the State Government, after taking into consideration the provisions of sec.3(1)(i) of the Act, remanded the matter to the concerned authority to take a decision afresh after

giving an opportunity to the society for initiating proceedings in accordance with Rule 4 of the Gujarat Agricultural Land Ceiling Rules, 1961 (“the Rules” for short). The said remand order dtd.29/1/1991 was not challenged by the petitioner, but, in response to a notice issued by the Collector, they appeared before him on 4/3/1991. The matter was adjourned to 18/3/1991 and thereafter to 25/3/1991. The learned Collector, in para 4 of his order, referred to the sum and substance of the remand order and quoted material observations from the said remand order, which were suggesting that the State Government was of the opinion that under sec.3(1)(i) of the Act, a certificate could not be issued unless the procedure prescribed under Rule 4 of the Rules was followed. Undisputedly, before the date of the order impugned, the petitioner society did not make any application under Rule 4 of the Rules. Taking into consideration the impact and effect of the remand order and that the society had not made an application under Rule 4 of the Rules, the Deputy Collector vide his order dtd.21/6/1991 held that the society was not entitled to any exemption certificate because, it had not taken any action under sec.3(1)(i) of the Ceiling Act read with Rule 4

of the Rules. The said order is under challenge before this Court.

3. Mr.Mehta, learned counsel for the petitioner submits that exemption certificate was granted in favour of the petitioner on 6/10/1986 and the same could not be taken in suo-motu revision by the State almost after five years. His further submission is that as the copy of the remand order was not served upon the petitioner, and as the members of the petitioner society are illiterate, they could not take any action under Rule 4 of the Rules and this inaction on their part should not lead to a capital punishment.

4. Mr.Kogje, learned Assistant Government Pleader for the respondents - State, on the other hand, submits that the order remanding the matter back to the Collector / Deputy Collector was not challenged and in fact, the petitioner submitted to the jurisdiction of the authority and after final order has been passed against their interest, they cannot now be allowed the challenge the said order of remand. He also submits that even if the order of remand was not served upon the society, then too, the society was required to make an inquiry as to why a matter which attained finality earlier, has been

reopened and had the society made an inquiry, it could have come to their knowledge that they were required to make an application under Rule 4 of the Rules. He submits that the order passed by the Deputy Collector is perfectly valid.

5. It would be trite to say that the order of remand, which could be challenged in some proceedings, if is not challenged and in pursuance to the remand order, any party submits to the jurisdiction of the subordinate court / tribunal and takes a chance, then, such party would not be allowed to challenge the validity of the remand order. I would immediately agree with Mr.Kogje, learned Assistant Government Pleader that the alleged the non-service of the remand order on the petitioner society would not make any difference, because, on reopening of the proceedings, the petitioner was required to inquire either from the records or from the concerned authority as to why the matter has been reopened. If the remand order required the petitioner to follow the procedure as provided under Rule 4 of the Rules and the petitioners have not followed the said procedure, then, the conclusion would be inevitable i.e. rejection of the application for grant of the certification. The order passed

by the authority, in the considered opinion of this Court, cannot be termed to be bad or illegal.

6. At this stage, Mr.Mehta, learned counsel for the petitioner submits that some liberty may be reserved in favour of the petitoner to make an application under Rule 4 of the Rules enabling them to persuade the Government that under the circumstances, they were entitled to a certificate.

7. In the opinion of this Court, if the law reserves such a liberty after declaration of excess vacant land, then, the petitioner would be free to approach the competent authority. However, it is made clear that, such authority, on receipt of such application from the petitioner society, would not be bound by any observation made by this Court, nor would it conclude that it is obliged to consider the application even after the declaration of the excess land.

8. The petition is dismissed. Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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